Supreme Court, U.S.
FILED

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NO. _____

SUPREME COURT OF THE UNITED STATES

JAMES L. MARTIN

Petitioner

VS.

SAMUEL L. KLINE and LISA M. MARTEL

Respondents

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1.) Is a judge who alters a court transcript entitled to absolute judicial immunity from civil suit?

2.) Is a court reporter who alters a transcript entitled to quasi judicial immunity?

3.) Are the actions of a judge in materially altering a court transcript well after the end of a judicial proceeding a judicial function pursuant to the law of; *Stump v. Sparkman*, 435 U.S. 349; *Mireles v. Waco,* 502 U.S. 9; and *Forrester v. White,* 484 U.S. 219, and in violation of the law of *Antoine v. Byers & Anderson Inc.*, 508 U.S. 429.

PARTIES TO THE PROCEEDINGS

The petitioners is James L. Martin, Esquire

The Respondents are the Honorable Samuel L. Kline, Judge and Lisa M. Martel an official court reporter for the Lebanon County Pennsylvania Courts.

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OPINIONS BELOW

The decision of the Court of Appeals is docketed at No. 03-4408 in the United States Court of Appeals for the third Circuit. The Court of Appeals classified the opinion as "Not Precedential" and it is reprinted in the Appendix to this petition ("Pet. App") at 1a. The decision of the District Court is not reported, but is reprinted at Pet.App.4a.

STATEMENT OF JURISDICTION

The judgment of the Court of Appeals was entered on July 2004, and this petition is being filed within 90 days thereafter. The Court has jurisdiction pursuant to 28 USC 1254(1).

CONSTITUTIONAL PROVISIONS NVOLVED

The First Amendment to the Constitution of United States reads as follows:

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or bringing the freedom of speech, or of the press, or the right of the people peaceably to assemble, and to petition the government for a redress of grievances."

The Constitutional right petitioner claims a deprivation of his right of access to the courts.

STATEMENT OF THE CASE

Plaintiffs timely filed their original complaint on June 3, 2003. The Honorable Samuel L. Kline filed a motion to dismiss, with brief, on July 9, 2003. On August 5, 2003 the defendant Lisa M. Martel also filed a motion to dismiss with accompanying brief. On August 8, 2003 plaintiffs filed a brief in opposition to the motion filed by Judge Kline and on August 20, 2003 filed a brief in opposition to the motion filed by Ms. Martel to dismiss the complaint. On August 12, 2003 the defendant Kline had filed a motion for protective order from discovery and case management. Subsequently there was a hearing held on the protective order on September 4, 2003 before, the trial judge, the Honorable John E. Jones the III (MD Pa.). On September 10, 2003 plaintiffs supplemented the hearing as per permission granted by the court on September 5, 2003. On November 6, 2003 Judge Jones dismissed the complaint, primarily citing the *Rooker- Feldman* Doctrine. There was no discovery permitted below. Petitioner filed an appeal to the Third Circuit who upheld the District Court on immunity grounds.

On or about June 1, 2001 a hearing was held before Respondent the Honorable Samuel L. Kline, in his courtroom (Courtroom #3) at the Lebanon County Courthouse, Lebanon, Pa. It was an Orphan's Court proceeding docketed at No 1997-588. The Respondent Lisa Martel was the court reporter for that hearing.

The hearing transcript was not transcribed or distributed until September 2001. On or about September 12, 2001 the appellants completed an errata sheet and mailed it the next day to the Lebanon County Courthouse. The request was that the sheet be filed. The errata sheet was mailed to

respondent Official Court Reporter Lisa M. Martel, Lebanon County Courthouse, 400 S. 8th Street, Lebanon, PA 17042-6794. Included was a stamped self addressed envelope to provide an acknowledgment and return to Petitioner James Martin. By the end of September (27, 2001) no acknowledgement had been received Petitioner sent the same package back by certified mail. Finally, on October 3, 2001 there was an acknowledgment received that the sheet had been filed. The transcript, however, had been altered was misleading in a number of ways – one was about respondent Grace E. Martin appearing pro se, but the transcript does not reveal this. Page 2 line 14 of the transcript should indicated that Grace L. Martin is the speaker, not Ann Martin, who never appeared, the following should also have appeared in the transcript,

"James Martin: I am trying to get the transcript to review it".

"Court: I don't' care what the transcript says".

The refusal of the Respondents to correct or acknowledge the errors is material to the underlying case. By expressly approving the altered transcript the respondent Judge Kline has kept the issue of his lucidity and his inconsistent actions from being reviewed. The Appellants allege that these actions are administrative in nature since they involve the issue of the court reporter function and because there is a paramount interest in accurate court records which exceeds any purported public policy interest in absolute immunity for judges, particularly when the function is administrative (reviewing, approving and directing that a transcript be filed and altering the same), as apposed to being judicial in nature (such as conducting court room proceedings). The controlling law is *Antoine v. Byers & Anderson Inc. et al.* 508 U.S. 429 (1993).

The Administrative Offices of the Pennsylvania Courts, who defended Judge Kline in the matter below, originally raised *Rooker-Feldman* and then walked away from the issue, as the transcript from the oral argument indicates. Ultimately the Third Circuit agreed with petitioners about the Rooker- *Feldman* Doctrine implications in the case.

The issue raised by plaintiffs is a pure federal question issue and it has to do with unlawful deprivations of their rights of access to the courts. The state court proceedings are (were) relevant in no other way. The issue is not whether the results in this case could possibly be used to lead to the over turn of some previous action through replacing Judge Kline, although that is an injury (the opportunity to attempt to do so) which petitioner is suffering. Were plaintiffs unlawfully denied their day in court i.e. their right to petition for a redress of grievances, in other words, fair and equal access to the courts? If they are deprived of an accurate and complete transcript they argue that they were. The Third Circuit upheld the District Court on immunity grounds. In so doing the Appeals Court violated the law as laid down by this Court.

REASONS FOR GRANTING THE WRIT

In *Antoine v. Byers & Anderson Inc.*, 508 U.S. 429, 113 S.Ct. 2167, 124 L.Ed.2d 391(1993) this court clearly and succinctly clarified what had previously been a confusing state of affairs wherein the Circuits differed over whether court reporters enjoyed absolute quasi judicial immunity, or merely qualified immunity, *Antoine* at 429-432 from civil liability. In the Ninth Circuit, the appeals court, interpolating *Forrester v. White*, 484 U.S. 219 opined that "the tasks performed by a court reporter in furtherance of her statutory duties are functionally part and parcel of the judicial process" 950 F.2d 592, at 1475-1476. Mr. Justice Stevens speaking for a unanimous court went on to hold in *Antoine* that court reporters are afforded no discretion in carrying out their court reporting function and indeed... "they are to record as accurately as possible, what transpires in court", *Antoine* at 436.

In the case sub judice the Third Circuit Court of Appeals, like the District Court, did not address the law of *Antoine* even though the case was argued to both courts in petitioner's briefs. In its brief opinion the Third Circuit cited two cases as authority for its holding on immunity, namely *Gallas v. Supreme Court of Pennsylvania*, 211 F.3d 760(3d Cir. 2000) and *Marcedes v. Barrett,* 453 F.2d 391(3d Cir. 1971)(the citation to this case was erroneously stated in the Third Circuit opinion as being a "F.3d" case). A review of these cases does not indicate, based either upon the facts or upon the prolific annotations(particularly in *Gallas)*, that they are on point at all. Although admittedly these cases, again particularly *Gallas*, contain outstanding obiter dictum on the concept of "judicial function" in our immunity law

they are arguably in conflict with *Antoine* if the Third Circuit holds that respondent Lisa M. Martel, the court reporter, is immune by any standard. Indeed, the Third Circuit decision under appeal here is inapposite to this Court's holdings in *Mireles v. Waco*, 502 U.S. 9(1991), and Stump v. Sparkman, 435 U.S. 349(1978) also.

This case is of the utmost importance for a simple public policy reason. The confidence and reliance of the public, attorneys, parties, judges, and indeed every citizen on accurate court records and transcriptions can not be overestimated. There is virtually no intellectual argument which could possibly support an argument of immunity for court reporters, or even for judges where a transcript of a court proceeding is intentionally altered. This would, and should, exclude of course changes made at the direction of the court during a proceeding. To begin with immunity in such a situation is a plain and simple necessity, and besides, the directions on altering or changing of the record is recorded there. In this case, months after the hearing, the judge directed the court reporter to remove express comments the judge had made in open court from the "verbatim record". *Antoine* left the question as to whether a judge would be liable under such circumstances, open. In this case, the Third Circuit reached a holding in direct violation of the law of the Supreme Court namely *Antoine.* The import of this court's holding in *Antoine* is clear and plain i.e., a court reporter is performing an administrative function when he or she is transcribing and producing a transcript of a court proceeding. Just as plain, it would seem, is the precise and pointed language and holding of *Antoine* that a judge who would intentionally alter the "verbatim record" of a hearing would be doing so after that hearing is closed and would be interfering with the court reporter

function also, administratively, not judicially. To hold otherwise cannot be I the interest of the fair administration of justice. It would not be logical to extend judicial immunity to that act on the part of a judge if the immunity is not enjoyed by the court reporter. Therefore, the respondent, Judge Kline should also not be entitled to immunity under Antoine nor should the court reporter be required to bear the burden of civil liability when, undoubtedly, she was directed to make the omissions by the judge.

It is absolutely crucial that every citizen in every circumstance be allowed to enjoy confidence in the accuracy of court transcriptions. Counsel can unequivocally state to this court that in numerous situations Court transcriptions are changed, "sanitized", and altered as a commonplace occurrence in Pennsylvania's Common Pleas courts. Admittedly, it is hopefully quite rare that this misconduct involves improper behavior by a judge. Typically these changes are probably made to avoid embarrassment or possible reporting to the Judicial Misconduct Board. Be that as it may, here there was a material issue that arguably could have supported a desired motion for recusal. Regardless, a remedy needs to be available to citizens who are entitled under the First Amendment to an unhampered right of access to our courts.

CONCLUSION

Every citizen, whether personally involved or not in a judicial proceeding, has the right to an accurate verbatim record of court proceedings, and most certainly every party to any proceeding in court has such a right. Altering a court transcript, which may impact a citizens right of access to the courts implicates the First Amendment and begs for a civil

remedy. Further, as *Antoine* suggested there is no benefit to not providing remedies for such a malady.

The Third Circuit Court of Appeals should be reversed and this Court should hold that no court reporter nor any judge should be free of civil liability where they intentionally alter a verbatim record of court proceedings.

Respectfully Submitted,

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APPENDIX EXHIBIT "A"

NOT PRECEDENTIAL

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 03-4408

JAMES L. MARTIN, et at.

Appellants

V.

SAMUEL L. KLINE, et at.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA
(D.C. Civ. No. 03-cv-00922)
District Judge: Honorable John E. Jones III

Submitted Under Third Circuit L.A.R. 34.1(a)
July 16, 2004
Before: SLOVITER, BARRY, and WEIS, Circuit Judges.
Filed July 19, 2004

OPINION

WEIS, Circuit Judge.

From the parties' briefs and appendix, notable for their lack of specific information, we glean the following. Plaintiffs were litigants in an Orphan's Court proceeding of some nature in the Court of Common Pleas of Lebanon County, Pennsylvania. Defendant, Judge Kline, presided. Apparently, after a hearing concluded, plaintiffs called alleged errors in the transcript to the attention of Judge Kline and defendant Lisa M. Martel, the court reporter.

Plaintiffs contend that their objections to the transcript were denied by the judge and defendant Martel. Plaintiffs took an appeal from the ruling at the hearing (whatever it was) to the Superior Court of Pennsylvania, which decided in favor of plaintiffs on the merits. As part of their appeal, plaintiffs apparently cited the refusal of Judge Kline to correct the transcript. We do not know from the material presented whether the Superior Court ruled on that contention or even discussed it.

Plaintiffs filed suit in the District Court for the Middle District of Pennsylvania, claiming that Defendants had violated their First Amendment rights by their mishandling of the court transcript. Plaintiffs asserted that the Orphan's Court matter was inactive for two years before arguments were heard in the District Court in the case now before us. The District Court concluded that it lacked subject matter jurisdiction based on the Rooker-Feldman doctrine, Rooker v. Fidelity Trust Co., 263 U.S. 413 (1923); District of Columbia Court of Appeals v. Feldman, 460 U.S. 462 (1983), and dismissed the case.

We conclude that Rooker-Feldman is not applicable here because the relief plaintiffs seek could not affect the favorable judgment that they obtained from the

Superior Court. See Parkview Assoc. P'ship v. City of Lebanon, *225* F.3d 321, 325-326 (3d Cir. 2000). The suit filed against the judge and the court reporter does not, so far as we can determine, require any alteration of the state court judgment. Rather, the complaint sets out an independent action seeking judgment against the defendants for "fees, costs, attorney's fees, emotional distress and such other relief as the court deems appropriate," and does not seek modification of the Superior Court's ruling.

We conclude, nonetheless, that judgment must be entered for the defendants. As the District Court noted in footnote 14 of its opinion, the defendants would be entitled to judgment based on judicial immunity in the instance of Judge Kline, and quasi-judicial immunity with respect to the court reporter, Lisa M. Martel. See Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 769 (3d Cir. 2000); Marcedes v. Barrett, *453* F.2d 391 (3d Cir. 1971).

The claims that plaintiffs present in this suit may more suitably be presented to the Pennsylvania judicial disciplinary system.

Accordingly, the order of dismissal will be vacated and judgment will be entered in favor of defendants.

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APPENDIX EXHIBIT "B"

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

JAMES L. MARTIN, ET AL. No. 1:03-CV-922
Plaintiffs (Judge Jones)

v.

SAMUEL I. KLINE, ET AL.
Defendants

MEMORANDUM AND ORDER

November 6, 2003

Currently pending before this Court are Defendants' motions to dismiss. We have reviewed the submissions of the parties and taken into consideration the presentations made at oral argument. For the reasons set forth below, we will dismiss the action for lack of subject mailer jurisdiction.

PROCEDURAL HISTORY

James L. Martin, Ann L. Martin and Grace E. Martin (hereinafter collectively referred to as "Plaintiffs") filed a civil action pursuant to 42 U.S.C. § 1983 against the Honorable Samuel I. Kline (hereinafter "Judge Kline"), a judge on the Court of Common Pleas of Lebanon County, Pennsylvania, and Lisa M. Martel, his court reporter (hereinafter "Defendant Martel"). The Plaintiffs claim that

the Defendants have violated their First Amendment rights by their willful or negligent mishandling of a court transcript.

On July 9, 2003, Judge Kline filed a motion to dismiss based on lack of subject mailer jurisdiction pursuant to the *Rooker-Feldman* doctrine, and for failure to state a claim for which relief can be granted based on a defense of judicial immunity. On August *5,* 2003, Defendant Martel filed an identical 12(b)(1) motion, and a 12(b)(6) motion on "absolute quasi-judicial immunity"' grounds.

BACKGROUND

On June 1, 2001, Judge Kline presided over a hearing in Lebanon County Orphans' Court division.[2] Defendant Martel was the court reporter, and in the course of her duties she later prepared a transcript. Plaintiffs subsequently submitted an "errata sheet" to Defendant Martel, alleging the existence of two errors

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Mot.to Dismiss at 1.

In re: Estate of Josephine A. Martin, deceased, Doc. No. 1997-588 in the transcript,[3] and received notice that the sheet had been filed.[4] The official transcript, which does not contain the corrections requested by the Plaintiffs, was certified as complete and accurate by Defendant Martel and approved by Judge Kline.[5] According to the Plaintiffs, the court's failure to correct these errors was material to the underlying case.[6]

Though the procedural history of Plaintiffs' state litigation is unclear from their submissions, it is evident that Plaintiffs appealed what we assume was an adverse decision of the Orphans' Court and within their appeal raised the issue of the transcript's inaccuracies.[7] In addition, Plaintiff

James L. Martin stated by sworn affidavit that the state litigation has been inactive for more than two years and that a decision on the merits was issued in favor of the Plaintiffs.[8]

TR at 2, 9.

Pt. Br. Opp'n. Def Kline's Mot. to Dismiss at 2.

TR at 16.

6 Plaintiffs claim that "[b]y expressly approving the transcript the defendant Judge Kline has kept the issue of his lucidity and his inconsistent actions from being reviewed." P1. Br. Opp'n. Def Kline's Mot. to Dismiss at 3.

Pt. Br. Opp'n. Def Mine's Mot. to Dismiss at 6. Further, Plaintiffs' brief makes the bald assertion that "no state court so much as gave it a glace or entertained the issue at all." Id.

Martin Aff.¶3.

DISCUSSION

Standard of Review

Defendants move to dismiss this action on Fed. R. Civ. P. 12(b)(1) and 12(b)(6) grounds. The threshold question for this Court is whether we have subject mailer jurisdiction to decide the case,[9] and thus we first consider Defendants' 12(b)(1) motion.

Rule 12(b)(1) motions fall into two categories: facial and factual challenges to subject matter jurisdiction. Mortensen v. First Fed. Savings & Loan Ass'n, 549 F.2d 884, 891 (3d Cir. 1977). The standard for factual 12(b)(1) challenges differs from that of both facial 1 2(b)(1) challenges and 1 2(b)(6) motions:

> Because at issue in a factual 1 2(b)(1) motion is the trial court's jurisdiction--its very power

> to hear the case-there is substantial authority that the trial court is free to weigh the evidence and satisfy itself as to the existence of its power to hear the case. In short, no presumptive truthfulness attaches to plaintiffs allegations, and the existence of disputed material facts will not preclude the trial court from evaluating for itself the merits of jurisdictional claims. Moreover, the plaintiff will have the burden of proof that jurisdiction does in fact exist.

See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, *94-5* (1998) ("[W]ithout jurisdiction the court cannot proceed at all in any cause." (quoting Ex parte McCardle, 74 U.S. (7 all.) 506, 514 (1868). See also In Re Corestates Trust Fee Litigation. 837 F. Supp. 104, 105(E.D.Pa. 1993) ("When a motion under Rule 12 is based on more than one ground, the court should consider the 1 2(b)(1) challenge first because if it must dismiss the complaint for lack of subject matter jurisdiction, all other defenses and objections become moot.") Id. (citations omitted). *Accord Travis v. Miller*, 226 F. Supp. 2d 663, 667 (E.D.Pa. 2002); *Daily v. Daily*, 96 F. Supp. 2d 463, 466 (E.D.Pa. 2000); *Altemose v. Charlestown Twp.*, No. 98-2862, 1999 U.S. Dist. LEXIS 4135, at *5 (E.D.Pa. Mar. 23, 1999); *Adams v. Costello*, No. 96-4377, 1998 U.S. Dist. LEXIS 6777, at *8..9 (E.D.Pa. May 13, 1998); *Perlberger v. Cirillo*, No. 96-6243, 1996 U.S. Dist. LEXIS 17519, at *3 (E.D.Pa. Nov. 26, 1996); *Grand Fraternity Rosae Crucis v. Court of Common Pleas*, No. 95-73 1, 1995 U.S. Dist. LEXIS 14096, at *1546 (E.D.Pa. Sept. 27, 1995). *Contra White v. Judicial Inquiry & Review Bd.*, 744 F. Supp. 658, 667 (E.D. Pa. 1990).

Defendants base their 1 2(b)(1) motion on the

Rooker-Feldman doctrine, thus raising a factual (rather than facial) challenge to subject matter jurisdiction See e.g. *McCurdy v. Esmonde*, No. 02-4614, 2003 U.S. Dist. LEXIS 1349, at *11 (E.D. Pa. Jan. 30, 2003) (stating that, since "*Rooker-Feldman* turns on whether the issues were or could have been raised in the state court.. . or whether [they] are inextricably intertwined with the state court judgment," the issues raised by the instant 1 2(b)(1) motion are fact-based.)

Rooker-Feldman Doctrine

Under Article III of the Constitution and pursuant to relevant congressional statutes, federal district courts are courts of limited subject matter jurisdiction. *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); *Employers Ins. of Wausau v. Crown Cork & Seal Co.*, 905 F.2d 42, 45 (3d Cir. 1990). "District Courts are granted original, not appellate, jurisdiction in most instances," *Ross v. Zavarella*, 732 F. Supp. 1306, 1314 (M.D.Pa. 1990) (citing 28 U.S.C. § 1331), and "lower federal courts possess no power whatever to sit in direct review of state court decisions." *Port Auth. Police Benevolent Ass'n v. Port Auth. of New York*, 973 F.2d 169, 177 (3d Cir. 1992) (quoting *Atlantic Coast Line R.R. Co. v. Bhd. of Locomotive Eng'rs*, 398 U.S. 281, 296 (1970).

The Rooker-Feldman doctrine dictates that lower federal courts cannot entertain constitutional claims that have been previously adjudicated in state court or that are inextricably tied to a state adjudication. "I7Flederal district courts lack subject matter jurisdiction to review final adjudications of a state's highest court or to evaluate constitutional claims that are 'inextricably intertwined with the state court's [decision] in a judicial proceeding.'" *Blake v. Papadakos*, 953 F.2d 68, 71 (3d Cir. 1992) (quoting *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 483 n.16 (1983)). *Accord Guarino v. Larsen*, 11 F.3d

1151, 1156 (3d Cir. 1993). See also *Rooker v. Fidelity Trust Co et al.*, 263 U.S. 413, 414 (1923)

10 28 U.S.C. § 1257, providing for review of 6state court decisions by writ *of* certiorari to the U.S. Supreme Court, is the exclusive procedure for federal review of state court judgments based on an alleged erroneous resolution of a claim or claims under constitutional or federal law.

> (holding that a losing state court litigant may not invoke federal jurisdiction to attack a state court judgment on the ground that the court had unconstitutionally misapplied state law).

In attempting to delineate which claims courts may determine to be "inextricably intertwined," the Court of Appeals for the Third Circuit was guided by Justice Marshall's insights in *Pennzoil v. Texaco Inc.*:

> While the question of whether a federal constitutional challenge is inextricably intertwined with the merits of a state court judgment may sometimes be difficult to answer, it is apparent, as a first step, that the federal claim is inextricably intertwined with the state court judgment if the federal claim succeeds only to the extent that the state court wrongly decided the issues before it. Where federal relief can only be predicated upon a conviction that the state court was wrong, it is difficult to conceive the federal proceeding as, in substance, anything other than a prohibited appeal of the state court judgment.

Centifanti v. Nix, 865 F.2d 1422, 1430 (3d Cir. 1989)

(quoting *Pennzoil*, 481 U.S. 1, 25 (1987) (Marshall, J., concurring)). In addition, the Third Circuit has stated that, as with the rules of claim preclusion, "[o]nce litigants' claims have been adjudicated in the state court system, they should not also have access to the entire federal court system. *Guarino, supra*, at 1157. Concomitantly, "federal courts have no jurisdiction to review state officials' compliance with state law." *Blake, supra*, 953 F.2d at 73 n.5.

Rooker-Feldman also prohibits federal district court review of the decisions of lower state courts:

> [I]f federal district courts are precluded, as they are, from reviewing the decisions of a state's highest court, even when those decisions appear to the district court to have plainly been in violation of the Constitution, then federal district courts are certainly also precluded from reviewing decisions of lower state courts, which are subject to correction and modification within the state court system.

Port Auth. Police Benevolent Ass'n, supra, 973 F.2d at 177. Further, the doctrine applies to claims that could have been raised in state court. *Valenti v. Mitchell*, 962 F.2d 288, 296 (3d Cir. 1992). Thus, if a party fails to raise his constitutional claim in state court, it is waived and cannot be raised in the lower federal courts. *Guarino*, supra, 11 F.3d at 1161-62 (holding that a state court judge had waived his constitutional claims by failing to raise them before the state's supreme court).

[I] fit is appropriate to presume that the state court would have been willing to decide [the Plaintiffs] constitutional claims subject to rebuttal by clear evidence to the contrary' [and] [t]herefore Plaintiff waived his constitutional claims

and this court is powerless to override his waiver." *Villela v. City of Philadelphia*, No. 95-1313, 1999 U.S. Dist. LEXIS 19843, at *13 (E.D.Pa. Dec. 30, 1999) (quoting *Guarino*, 11 F.3dat 1156).

In the case at bar, Plaintiffs concede that they raised their claim that the trial court transcript contained errors within the appeal of their state court action. Under Pennsylvania Rule of Appellate Procedure 126, the parties are to submit their disagreement with the record to the lower court for consideration; if errors persist, the appellate court "on proper suggestion or of its own initiative, may direct that the omission or misstatement be corrected. . . . "i' As previously noted, we have been provided with little procedural history of the underlying state adjudication. But because the Plaintiffs admit they raised the issue in the appellate court, we must assume that the court appropriately considered their objection to the trial court transcript and decided against making the requested alterations. If the Plaintiffs were dissatisfied with this outcome, they could and should have appealed the issue, along with any constitutional claims, to the state supreme court rather than to a federal district court. As the court stated in *Port Authority*, "[j]udicial errors committed in state courts are for correction in the state court systems, at the head of which stands the United States Supreme Court; such errors are no business of ours... ." 973 F.2d at 177. In order for this Court to decide Plaintiffs claims, we would need to examine the decision of the Pennsylvania Superior Court in the underlying action, something that *Rooker-Feldman* plainly states we cannot do.

Pa.R.App.P. 1926. In addition under Rule 1922, "[i]f objections are made the difference shall be submitted to and *settled by the trial court.*" Pa.R.App.P. 1922 (emphasis added).

Plaintiffs claim that, because Judge Kline and court reporter Martel willfully or negligently failed to correct the transcript, they were deprived of their constitutional right to access to the courts. They bring this claim pursuant to Section 1983, and therefore must show that the Defendants' conduct in not correcting the transcript was both sanctioned under color of state law and amounted to a deprivation of a constitutional or federally protected right. See *Morse v. Lower Merion Sch. Dist.*, 132 F.3d 902, 907 (3d Cir. 1997). The deprivation claimed by the Plaintiffs in this case, violation of their right of access to the courts, was recognized by the Supreme Court in *Bounds v. Smith*. 430 U.S. 817 (1977). The *Bounds* Court held that prisoners have a constitutional right to such access, and that it must be "adequate, effective, and meaningful." 430 U.S. at 821. Though the Supreme Court did not cite a constitutional source for this right, the Third Circuit has held that "the First Amendment right to petition the government for redress of grievances is the proper source for the right of access to courts." *Johnson v. Miller*, 1995 U.S. Dist. LEXIS 20745, at **4 (E.D.Pa., Maj. Rep. Oct. 23, 1995), adopted by *925* F. Supp. 334 (E.D.Pa. 1996) (quoting *Bieregu v. Reno,* 59 F.3d 1445, 1453-54 (3d Cir. 1995).12. In Bieregu the Third Circuit also found that the Due Process Clause of the Fourteenth Amendment is a proper source for the right of access to courts. 59 F.3d at *1454.*

In order to claim such a deprivation, Plaintiffs must also show that they were actually injured in order to maintain a cause of action under Section 1983. See *Johnson,* supra, at * * *4-5.* The Third Circuit has repeatedly held that a plaintiff does not have a constitutional right to an error free transcript. See. e.g. *Tedford v. Hepting,* 990 F.2d *745,* 747 (3d Cir. 1993); *Carpenter v. Vaughn*, 296 F.3d 138, *155* (3d Cir. 2002). In addition, "a constitutional violation would occur

only if the inaccuracies in the transcript adversely affected appellate review in the state courts. The threshold question, therefore, is . . . whether plaintiff has alleged deficiencies in the trial transcript substantial enough to call into question the validity of the appellate process in the state courts." *Carpenter*, supra, at *155* (quoting *Tedford*, supra, at 747). At oral argument of this mailer the Court requested that Plaintiffs' counsel provide information regarding the procedural posture of Plaintiffs' state court claim. The import of the question was obviously to determine whether the alleged errors in the transcript called into question the validity of the appellate process in the state courts. He was unable to do so with specificity, and in fact did not know whether it had concluded.'[3] We then allowed the record to remain open

'3 Although Plaintiffs' counsel attempted to excuse his lack of knowledge about the procedural posture of Plaintiffs' state claim by stating that he was not counsel in that matter, we consider it to be astonishing, given the nature of the action before us. that counsel would not know if or how the underlying claim had resolved.

for clarification, resulting in Plaintiffs' Exhibit "A" to Report/Supplementation to the Court, the affidavit of James L. Martin (doc. 30). Interestingly, the affidavit confirms that Plaintiffs prevailed in their underlying state action, and thus there is no indication that they suffered any harm whatsoever to their state claim via Defendants' alleged conduct. It is evident that Plaintiffs, in order to avoid *RookerFeldman's* application, now attempt to cast their claim as an independent action under Section 1983 unrelated to the procedural posture of the underlying case. In addition to their

failure to establish any injury, the very fact that Plaintiffs raised the failure to correct alleged errors in the state proceeding points out why this tactic will not remove the application of *Rooker-Feldman* to this case.

Because we will dismiss plaintiffs complaint pursuant to Rule I 2(b)(1) for lack of subject matter jurisdiction, we need not address Defendants' claims that dismissal is appropriate under Rule 1 2(b)(6) for failure to state a claim."[4]

However, we believe that were we to consider fully the immunity claims raised by Defendants, they would provide a more than adequate basis to dismiss Plaintiffs' action. See, ~ Gallas v. Supreme Court of Pennsylvania, 211 F.3d 760, 769-70 (3d Cir. 2000) (stating that judges have absolute immunity for their actions if 1) they are those normally performed by judges and 2) the parties dealt with the judge in his judicial capacity, and notwithstanding the fact that the actions were taken in error, done maliciously, or were in excess of his authority) (citations omitted); Davis v. Philadelphia County. et al., *195* F. Supp. 2d 686, 698 (E.D.Pa. 2002) (holding that quasi-judicial immunity applies to court staff, such as clerks of judicial records and court reporters, who are acting in their official capacities) (citation omitted).

For the reasons discussed above, it is clear that this Court lacks jurisdiction to preside over this matter. Accordingly, pursuant to Federal Rule of Civil Procedure 12(h)(3), this action will be dismissed.

THEREFORE, IT IS HEREBY ORDERED THAT:

1. Defendant Kline's motion to dismiss (doc. 7) is GRANTED for lack of subject mailer jurisdiction.

2. Defendant Martel's motion to dismiss (doc. 12) is GRANTED for lack of subject matter jurisdiction.

3. The clerk is directed to close the case file.

s/John E. Jones III
John E. Jones III
United States District Judge

Fed.R.Civ.P.12(h)(3) states that "[w]henever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action".